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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,394	04/19/2004	John K. Jackson	UBC.P-033	5855
57381	7590	04/25/2006	EXAMINER	
Marina Larson & Associates, LLC P.O. BOX 4928 DILLON, CO 80435			VIVLEMORE, TRACY ANN	
			ART UNIT	PAPER NUMBER

1635

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/828,394

Applicant(s)

JACKSON ET AL.

Examiner

Tracy Vivlemore

Art Unit

1635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 6-8.
Claim(s) withdrawn from consideration: 9 and 10.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


JAMES SCHULTZ, PH.D.
PRIMARY EXAMINER

TV
April 18, 2006

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant traverses the rejection of claim 6 for lacking written description by stating the examiner has not met the burden of showing why the sequences of clusterin known in the art are not representative of the clusterin from all the species. Claim 6 encompasses the use of oligonucleotides effective to reduce the amount of clusterin in species for whom the sequence of clusterin is yet to be discovered, thus a comparison of the known sequences with sequences yet to be discovered is not possible. However, even for the known sequences of clusterin no description of essential motifs and/or domains that are common across the known sequences exists. Without such disclosure there is no way for the skilled artisan to envision the structure of oligonucleotides that would perform the claimed function throughout the scope of claim 6. Applicant further traverses the rejection by stating that the claimed invention is a method of reducing angiogenesis, not clusterin sequences and inhibitors per se. The examiner recognizes that the invention is not the clusterin inhibitor, but because the invention requires the use of such inhibitors a description of the structure of the inhibitor is necessary.

Applicant traverses the obviousness type double patenting rejection over application 10/646,436 by asserting the examiner has not addressed how instant claim 6 is an obvious variation of claim 20 of the '436 application. This argument was addressed at pages 3-4 of the office action mailed 2/28/06, which stated that claim 29 of the '436 application recites specific cancers that can be treated by the method of claim 20. The cancers recited in claim 29 are cancerous angiogenesis-related diseases and thus the methods claimed in the '436 application are species that would anticipate of the instant generic methods and the claimed result of reducing angiogenesis would occur, absent evidence to the contrary.

Applicant traverses each of the anticipation rejections by stating all of the references are silent with respect to angiogenesis and thus do not teach the invention of claims 6-8. This argument is not persuasive because each of the references discloses the claimed step of administering an inhibitor of clusterin to cells of a cancerous angiogenesis related disease. The examiner acknowledges and agrees with applicant's statement that "simply because reduction of angiogenesis may have occurred does not give rise to a basis for an anticipation rejection under principles of inherency". However, because each of the references discloses a method performing the active step of the claimed method in a cell that is a target cell of the invention, each of the references discloses methods that, absent evidence to the contrary, has the effect of reducing angiogenesis.